IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2141 OF 2005

Santosh Shamrao Chaware ...Petitioner

vs.

The Commissioner of Police,
Solapur and others ...Respondent

U.R.Aagandsurve for the Petitioner
Mr.K.V.Saste,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 23,2005

P.C.:

1. Heard Advocate for the Petitioner and the learned A.P.P. for State. Rule. Learned A.P.P. waives service. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. The challenge in this Petition is to the communication dated 29th June 2005 issued by the Respondent No.3 -State Government. It appears that an Appeal was preferred by the Petitioner under Sub Section 1 of Section 33 of the said Act of 1951 for challenging the order dated 29/31-1-2005 passed by the Respondent No.1. By the impugned communication/order the State Government informed the Petitioner that the Appeal preferred by the Petitioner was not within the period of limitation and there were no justifiable reasons for condoning the delay.

3. The learned Advocate for the Petitioner submitted that considering the fact that the Petitioner came to this Court for challenging the impugned order, the delay has been sufficiently explained. He submitted that the Petitioner should have been heard before passing the order. The learned A.P.P. submitted that the prayer for condonation of delay has been considered by the State and the same is rejected as there was no ground available for condonation of delay.

4. I have considered the submissions. The impugned order itself discloses that the Petitioner had offered an explanation for delay in preferring the Appeal. Even from the impugned order it appears that before considering the request made by the Petitioner for condonation of delay, the Petitioner was not heard. In my view, while deciding the prayer made for condonation of delay in a statutory Appeal, the Respondent No.3 ought to have heard the Petitioner. Only on this ground, the impugned order deserves to be quashed and set aside with a direction to the Appellate Authority to give hearing to the Petitioner on the prayer for condonation of delay and thereafter to pass an appropriate order.

5. Hence I pass the following order :

i) The impugned order dated 29th June 2005 (Exh.E) is quashed

and set aside.

ii) The Appellate Authority is directed to decide the prayer made by the Petitioner for condonation of delay in accordance with law after giving an opportunity of being heard to the Petitioner. The prayer for condonation of delay will be considered and decided by the Appellate Authority within a period of two weeks from the date of production of authenticated copy of this order. If the delay is condoned, the Appellate Authority will hear the Appeal on its own merits as expeditiously as possible.

JUDGE